

**GOVERNMENTAL ADVISORY COMMITTEE
TO THE U.S. REPRESENTATIVE TO THE
NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION**

October 15, 1996

Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, DC 20460

Dear Ms. Browner:

Following is the report of the fifth meeting of the Governmental Advisory Committee to the U.S. Representative to the North American Commission for Environmental Cooperation. The Committee met September 25-26, 1996, at Seattle, Washington, in conjunction with its counterpart National Advisory Committee.

The Committee found its latest meeting to be very useful and productive. We especially wish to thank NAFTA Coordinator Serena Wilson and Greg Block from the North American Commission (CEC) Secretariat for their outstanding cooperation with and assistance to the Committee.

CEC Work Program and Budget

In addition to the comments that follow, the Committee has provided a number of earlier recommendations concerning the 1997 work program. We look forward to reviewing the Secretariat's proposed 1997 work program expected in October. At this point, on behalf of the Committee, I wish to express our appreciation for the extent to which our previous recommendations have been addressed and incorporated in the CEC's work program.

The Committee continues to endorse strongly the need for the Secretariat to focus its efforts on fewer priority projects. The Secretariat now has begun to develop a sound foundation on which to build and should

emphasize those areas in which they are likely to be most successful. We also urge that the Secretariat be permitted to address priorities in addition to those cited in annual meeting resolutions.

With respect to the CEC budget, we do not believe that the CEC can continue to remain at an annual budget of \$9 million (U.S.), especially including support to the North American Fund for Environmental Cooperation (NAFEC), and effectively meet its most critical priorities. We recommend that the CEC not be required to absorb the \$2 million (CAN) for NAFEC grants from its operating programs base. We urge the governments and the Secretariat to look for opportunities to support CEC goals through leveraging other organizations' priorities and reorienting other federal grant programs and through work with each country's private funding networks. We urge the governments to help the CEC access in-country foundation and industry funds. We also recommend that the CEC consider using its funds to buy-in to existing industry, academic and nongovernmental organization work that supports, or could support, CEC goals and objectives without requiring the CEC to initiate and manage the project. While we understand that the Executive Director has been advised to reduce administrative overhead, we urge that this not result in any loss of quality of work product.

The Committee believes that the CEC must play a key role in North American air quality issues and in assuring synergistic consideration of technical and policy issues. The CEC's role is particularly critical in addressing long-range transport and transboundary issues, including implementation of Article 10.7 transboundary environmental impact assessment and notification procedures.

The Committee is very concerned that utility restructuring, the Federal Energy Regulatory Commission's recent ruling, and NAFTA implementation generally will potentially increase generation of carbon-intensive, non-renewable power inside and outside the U.S. that may seriously impact air quality trilaterally. The Committee has endorsed the enclosed Resolution which urges that the CEC foster communication and cooperation among the three countries regarding these issues, address environmental and health impacts associated with deregulation, and participate in development of a market-based strategy which will encourage cleaner sources of energy development and distribution. The Committee will be happy to work with appropriate U.S. agencies and the Secretariat to outline a work program.

We also recommend that CEC air quality work address air quality, water quality and natural resource linkages; nonpoint source impacts, e.g.,

incomplete combustion and auto emissions, fine particulates, wildfires and agricultural burning, and coastal shipping; selection of air quality trend monitoring sites in each country and along the borders; and establishing agreement on protocols for selection of pollutants, establishment of laboratories, and joint analyses of information.

The Committee is very pleased with the increased CEC emphasis on trade and environment linkages. We continue to believe that the Secretariat's NAFTA Effects project is the centerpiece of CEC effort. We concur with the need for better links among the three countries environment and trade ministers and hope for fruitful discussions prior to the upcoming World Trade Organization (WTO) meeting. The Committee recommends that such discussions include continued pressure to encourage wider use of NAFTA environmental agreement processes by other WTO countries and to encourage use of CEC environmental expertise in environmental dispute prevention and resolution.

While there has been very substantial progress in CEC communications and information dissemination, we recommend continuing efforts to improve its communication strategies. We recommend that the staff more clearly identify the intended audience(s) for their outreach efforts, information materials and reports and tailor strategies to reach different audiences. Clearly, given the diversity of the audiences and the materials, "one size does not fit all."

We also continue to recommend that the Secretariat assure that access to information be a major element of CEC reporting and project work plans, especially the North American PRTR/TRI and Regional Action Plans on priority chemicals. We believe that these and other CEC projects can become models of processes to improve public access to information.

Article 14-15 Guidelines

The Committee understands that the three governments agreed to review the need for revisions to the Citizen Submission Guidelines after they had been in force for 18 months. Despite that agreement, we do not believe that there has been enough activity under the guidelines to identify a significant need for changes. If the governments do establish a process to consider revising the guidelines, we urge that there be an outreach process in the U.S. involving states (including state organizations such as the Environmental Council of the States), tribes, local governments, and nongovernmental organizations. The Committee also requests the

opportunity to review draft revisions and to make comments. Given the earlier experience, we do not recommend holding another series of Joint Public Advisory Committee hearings on the Guidelines.

The Committee wishes to raise again its earlier concerns and recommendations regarding the lack of standing of state, local and tribal governments, as governmental entities, to make submissions to the Secretariat under Articles 14 and 15 of the Agreement. While understanding that governmental officials may, in their individual capacities, file submissions with the Secretariat, we continue to emphasize that governments should not have to rely on this alternative. In addition, with respect to Sec. 16.3. of the Guidelines, we request that any changes to the current Guidelines require that all parties named in a submission will be notified immediately and that named governmental entities will continue to be consulted on policy and technical issues throughout the processing of the Submission.

Deregulation and Implementation of Voluntary Compliance Initiatives

The Committee continues to strongly endorse voluntary compliance initiatives as an important tool for achieving environmental benefits. As noted in earlier reports, we support use of all tools available, also including enforcement and compliance technical assistance and training. The Committee recommends emphasis on obtaining environmental benefits, not on the means of achieving those benefits. We generally concur with development of a trilateral voluntary compliance program in cooperation with major industrial corporations and the governments. We also endorse additional efforts that provide voluntary compliance information and pollution prevention assistance to small and medium sized companies.

While we do not concur with a number of specific allegations raised by some nongovernmental organizations, we are still very concerned with legislative proposals introduced in each country that would lower standards and “downward harmonize” current requirements, particularly in light of commitments made by each country in Article 3 of the NAFTA Supplemental Agreement to “provide for high levels of environmental protection” and to “strive to continue to improve those laws and regulations.” The Committee recommends that the three countries establish common principles, guidelines and objective measures for evaluating the status of implementation of environment-related legislation in each country. We also

strongly recommend that the three countries identify innovative, more feasible ways to effectively meet the intent of Article 3.

North American Fund for Environmental Cooperation (NAFEC)

The Committee is very supportive of the NAFEC's results to date. We thank and highly commend Tim Douglas, one of our members, who has served as a member of the trilateral project review panel.

We believe that the governments need to increase the Secretariat's overall budget or to pursue private funding sources in order to support the Secretariat's direct work program as well as to provide NAFEC funds of \$2 million (CAN). In lieu of increased federal appropriations for the CEC, the Committee recommends that the governments discuss CEC and NAFEC objectives with national foundations and other private and industrial funding sources to attempt to obtain needed funds externally.

We support greater focusing and more detailed guidance concerning each round of project solicitations. We also recommend increased CEC liaison with other funding organizations to encourage their financial support of CEC goals and objectives and referrals of unfunded project proposals to such organizations for funding consideration. In addition, reiterating recommendations in our March 1996 report, the Committee continues to recommend issuance of a larger number of small grants; an annual grant award schedule to minimize review and administration costs; that small local governments and tribes receive grants directly in addition to cooperation with nongovernmental organizations; consideration of a requirement for limited in-kind or private matching of the grants; leveraging of NAFEC funds with foundations and state/local governments; minimal grant application and reporting paperwork requirements; and use of targeted audits to assure that grantees use funds for the purposes awarded and that the Secretariat is protected from allegations of waste or mismanagement.

Committee Projects

Tribal Forum

The Committee is working with tribes, appropriate staff in the Environmental Protection Agency and other agencies to co-sponsor a NAFTA and environmental issues forum for tribes along the southwest U.S. border. The event will likely occur early in 1997 in California. Although Committee staff have maintained contact with the CEC, the CEC has not been interested in working with us because we believe it is essential to focus this effort initially only on U.S.-based tribes. We see this forum as a likely model for the

CEC to identify indigenous peoples' issues and to develop a more useful, focused work program to address these issues. The Committee would appreciate the CEC paying greater attention to and participating in this initiative, including possibly providing limited financial assistance.

Review of CEC Reports

The Committee received the CEC's 1995 Annual Report at our meeting. We will review the Report and may provide recommendations later regarding preparation of the 1996 Annual Report.

Following receipt of information, the Committee commits to provide comments on CEC 1997 priorities and proposed work program, and on the Article 10.7 Transboundary Environmental Impact Assessment report.

We appreciate the opportunity to provide this report and recommendations to you and await your response. In addition, we wish to thank and commend Robert Hardaker, our Designated Federal Officer, for his assistance in preparing for our meetings, organizing our wide-ranging discussions into coherent recommendations, and for serving as an ongoing and invaluable resource to our efforts.

Sincerely,

Ann Glumac
Chair

Enclosure

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RESOLUTION

WHEREAS utility restructuring has the potential to greatly impede or promote non-carbon- intensive clean power;

WHEREAS utility restructuring may directly affect air quality, global warming, and acid rain trilaterally;

WHEREAS restructuring, layered on top of the Federal Energy Regulatory Commission's recent ruling and coupled with NAFTA, will potentially create a trilateral utility market for power generation and distribution among all three countries;

WHEREAS this cross-national distribution of energy will have unforeseen environmental and health impacts that no individual state or even federal government can anticipate;

WHEREAS the Governmental Advisory Committee is extremely concerned about the increase in generation of carbon-intensive, non-renewable power inside and outside the U.S.;

THEREFORE, BE IT RESOLVED:

The Governmental Advisory Committee recommends that the Commission for Environmental Cooperation (CEC):

- a) play a leadership role in this ground breaking issue;
- b) foster communication and cooperation among the three national governments and with appropriate third parties including state and local governments, tribes, nongovernmental organizations, and "green power" generators; and
- c) address environmental and health impacts associated with deregulation, assess those impacts trilaterally, and develop a market-based strategy which will encourage cleaner sources of energy development and distribution through cooperative purchasing and other innovative strategies.